

## **Part 402 – Civil Rights Policies**

### **Subpart A – Civil Rights Accountability Procedures**

#### **402.0 Purpose and Scope**

This subpart sets policy and procedures to ensure that appropriate disciplinary or corrective actions are taken for those employees who engage in discriminatory behavior or civil rights-related misconduct.

#### **402.1 Policy**

A. It is the policy of NRCS to treat customers and employees equitably, regardless of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, marital or familial status, parental status, and protected genetic information. Reprisal of any kind against customers or employees will not be tolerated. Agency officials, managers, supervisors, and other employees will be held accountable for discrimination, reprisal, civil rights violations, and related misconduct.

B. Managers and supervisors are responsible for the environment in which their employees work, and have a duty to take both affirmative and corrective action to ensure equal opportunity and civil rights for customers and employees. To deter violations, managers and supervisors are required to take appropriate corrective or disciplinary action in findings of discrimination, reprisal, civil rights violations, and related misconduct in employment and program matters.

C. Additionally, managers and supervisors will be held accountable for failure to take appropriate action in response to any findings of discrimination, reprisal, civil rights violation, and related misconduct. Annual performance appraisals for managers and supervisors will include an evaluation of their compliance with the NRCS commitment to civil rights and equal opportunity.

#### **402.2 Major Authorities**

A. Departmental Regulation (DR) 4300-6, “Civil Rights Policy for the Department of Agriculture,” Section 3(c), Accountability, dated June 30, 2000.

B. Departmental Regulation (DR) 4710-1, USDA Alternative Dispute Resolution Policy.

C. Departmental Personnel Manual, Chapter 751, including Appendix A, USDA Guide for Disciplinary Penalties.

D. Departmental Manual (DM) 4330-1, Procedures for Processing Discrimination Complaints and Conducting Civil Rights Compliance Reviews in USDA-Conducted Programs and Activities.

E. Departmental Manual (DM) 4330-2, Procedures for Processing Discrimination Complaints and Conducting Civil Rights Compliance Reviews in USDA-Assisted Programs and Activities.

F. Departmental Manual (DM) 4300-1, EEO Complaints Processing Procedures.

G. Departmental Regulation (DR) 4300-009, Equal Employment Opportunity Complaints Where a Department Senior Civil Rights Official is the Responsible Management Official.

#### **402.3 Covered Actions**

The final actions below will be evaluated to determine if disciplinary or other corrective action is warranted:

- A. Final Agency Decision (FAD) issued with findings of discrimination for EEO and Program Complaints.
- B. Decisions issued by Administrative Judges of the Equal Employment Opportunity Commission (EEOC), the EEOC Office of Federal Operations, or the Merit Systems Protection Board that include findings of discrimination (for EEO Complaints).
- C. Administrative Law Judge (ALJ) Decisions with findings of discrimination (for program discrimination complaints).
- D. Court Decisions on EEO or Program discrimination complaints with findings of discrimination.
- E. A finding of Misconduct related to civil rights and EEO issues.

#### **402.4 Reported Actions**

- A. Settlement Agreements of EEO complaints.
- B. Settlement and Conciliation Agreements of program discrimination complaints.

#### **402.5 Responsibilities and Procedures**

- A. The Civil Rights Division will:
  - (1) Forward to the USDA Office of Civil Rights (CR) any Covered and Reported Actions that were not issued by CR no later than fifteen (15) calendar days after the document is received.
  - (2) Using the Office of Civil Rights Accountability Case Record form (Section 402.6), provide the NRCS Human Resources Management Division (HRMD) the following: the FAD, the Administrative Judge (AJ) analysis and decision or Court order and analysis to determine the need for corrective or disciplinary action when there is a finding of discrimination in EEO and program delivery complaint cases.
  - (3) Provide HRMD with the complete case file.
  - (4) Send CR information as specified on Section 402.6, "Office of Civil Rights Accountability Case Record."
  - (5) Discuss any issues with HRMD, and the Agency staff office, as appropriate;
  - (6) Consult with the Office of the General Counsel's Civil Rights Division, as appropriate.
  - (7) Notify in writing the accused manager, supervisor, or employee when there has been a finding of discrimination, reprisal, or civil rights violation or related misconduct.
  - (8) Prepare reports on trends and patterns for the Chief, NRCS and send a copy to the Assistant Secretary for Civil Rights and NRCS HRMD.
- B. The NRCS HRMD will:
  - (1) Within five (5) calendar days of receiving the Office of Civil Rights Accountability Case Record, initiate an inquiry into the underlying circumstances leading to the Covered or Reported Actions. The inquiry shall be used to determine whether disciplinary or corrective action is warranted. If the underlying circumstances implicate activities of a political appointee, Senior Executive Service employee or Senior Scientific Research Service employee, the USDA Office of Human Resources Management (OHRM) shall initiate the inquiry.
  - (2) Handle reported Actions in a manner to ensure that the confidentiality clause in any settlement or conciliation agreement is not violated. In addition, any request for additional documentation or inquiry by an HR Director shall not contravene the confidentiality normally accorded to the alternative dispute resolution (ADR) process, pursuant to the ADR Act.
  - (3) Notify the discriminating employee(s) of potential disciplinary action.

- (4) Report to CRD Director, CR, and OHRM the results of the inquiry and whether any disciplinary or corrective action was taken.
- (5) Prepare quarterly report, based on fiscal year cycle in the aggregate, on the following:
  - (i) Number of cases with a finding of discrimination resulting in disciplinary or corrective actions;
  - (ii) The types of disciplinary or corrective actions taken; and
  - (iii) The reasons why disciplinary action was not taken.

C. NRCS Division Directors and above, State Conservationists, and Directors of Pacific Basin and the Caribbean will:

- (1) Ensure that managers and supervisors work with their servicing human resources offices to ensure that appropriate disciplinary or corrective action is taken for those employees who engaged in discriminatory behavior or related misconduct.
- (2) Conduct employee misconduct investigations or inquiries to obtain sufficient evidence to make a determination on disciplinary or corrective action, as appropriate. Investigations and inquiries should be consistent with the USDA and the NRCS policies and procedures.
- (3) Consult with and receive concurrence from HRMD prior to taking any disciplinary or corrective action; and provide a copy of the final action(s) to HRMD, with a copy of the analysis supporting the action (or no action) taken.
- (4) Send HRMD information as specified on Section 402.7, "NRCS Staff Office Case Report."

#### **402.6 Office of Civil Rights Accountability Case Record**

- (1) AGENCY NAME: \_\_\_\_\_
- (2) COMPLAINANT'S NAME: \_\_\_\_\_
- (3) CASE NUMBER: \_\_\_\_\_
- (4) TYPE OF CASE:  
\_\_\_\_ EMPLOYMENT  
\_\_\_\_ PROGRAM
- (5) ACTION TYPE:  
DECISION  
Select one: \_\_\_\_ COURT  
\_\_\_\_ ALJ  
\_\_\_\_ AJ  
\_\_\_\_ FAD  
SETTLEMENT
- (6) ISSUE(S):  
\_\_\_\_ Non-selection \_\_\_\_ Reprisal \_\_\_\_ Harassment \_\_\_\_ Sexual Harassment  
\_\_\_\_ Hostile working conditions \_\_\_\_ Working Conditions/Environment  
\_\_\_\_ Promotion \_\_\_\_ Performance Appraisal \_\_\_\_ Delay of Benefit  
\_\_\_\_ Denial of benefit (i.e., cost-share)  
\_\_\_\_ Other: \_\_\_\_\_

(7) DATE OF DECISION: \_\_\_\_\_

(8) NOVEL ISSUE: ☐ Yes ☐ No

If yes, please identify: \_\_\_\_\_

#### **402.7 NRCS Staff Office Case Report**

(1) AGENCY/STAFF OFFICE NAME: \_\_\_\_\_

(2) COMPLAINANT'S NAME: \_\_\_\_\_

(3) CASE NUMBER(S): \_\_\_\_\_

(4) ACTION BASIS:

☐ AGENCY INVESTIGATION/INQUIRY

☐ DECISION

Select one: ☐ COURT

☐ ALJ

☐ AJ

☐ FAD

☐ SETTLEMENT ☐ OTHER: \_\_\_\_\_

(5) TYPE OF CASE: ☐ EMPLOYMENT ☐ PROGRAM

(6) ISSUE(S): ☐ Non-selection ☐ Reprisal ☐ Harassment

☐ Sexual Harassment ☐ Hostile working conditions

☐ Working conditions/Environment ☐ Promotion

☐ Performance Appraisal ☐ Delay of Benefit

☐ Denial of benefit (i.e., cost-share)

☐ Other: \_\_\_\_\_

(7) PROVIDE THE FOLLOWING INFORMATION:

A. NAME(S) AND IDENTIFICATION OF RESPONDING OFFICIAL(S)

(INCLUDE TITLE, SERIES, & GRADE AND WORKING TITLE – IF NECESSARY)

B. IDENTIFY – CAREER SES, POLITICAL APPOINTEE/SCHEDULE C

C. DISCIPLINE OR CORRECTIVE ACTION(S) AND DATE(S)

INCLUDE: PROPOSAL AND DECISION DATE(S)

D. OTHER CORRECTIVE ACTION, TRAINING, ALTERNATIVE DISCIPLINE